IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.522 OF 2007.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. R.L.Khapre, Advocate for Petitioner.

CORAM : R.C.CHAVAN, J.

DATED : JUNE 12, 2007.

1. This petition is directed against order passed by learned Civil Judge Senior Division, Washim, rejecting petitioner/decree holder's applications Exh.72 and 73 in Special Darkhast No.11/1996 before him.

2. I have heard Advocate Mr. Khapre, learned counsel for the petitioner at adequate length.

3. By Exh.72 the petitioner had sought appointment of an Advocate as Commissioner to effect partition of properties not amenable to partition through Collector. By

Exh.73 the petitioner claimed that the properties sold by the petitioner to Janta Co-operative Bank, Akola may be allotted to the petitioner's share and that the petitioner would have no objection for grant of 1000 sq.ft. land to the Judgment Debtor.

4. It appears that the decree for partition entitles the Judgment Debtor to 1/6th share in the property. Previously there was a house which was to be partitioned. The petitioner/ decree holder has demolished that house and therefore, the question of value of the structure of the property, which has been dismantled, has arisen. The learned trial Judge, therefore, rejected the request for appointment of Commissioner observing that unless the valuation of the suit property, which has been dismantled, as well as movables is done, & is brought on record by evidence, the question of appointment of Commissioner would not arise. The order is perfectly reasonable and is not liable to be interfered with.

5. As far as petitioner's prayer that the property sold by the petitioner to Janta Bank should be allotted to the

partition share of the petitioner and that the petitioner would have no objection to grant 1000 sq.ft. to the Judgment Debtor from the remaining 4000 sq.ft. of land, this amounts to put cart before the horse. The petitioner is precipitating as to how partition is to be effected and claiming that commissioner should be appointed. Therefore, this course adopted by the petitioner was also rightly repelled by the learned trial Judge.

6. The petitioner's grievance about some observations in the order may have some force. The learned Judge of the executing Court seems to have observed that the transferee Bank has taken risk by purchasing a portion of the suit property which is under litigation. Though he has also observed that there is some dispute about preemption, pending between parties, presumably about Judgment Debtor having preferential right to purchase property which the Decree Holder has sold to the Bank, in this regard it would be sufficient to observe that the learned trial Judge would not be oblivious to the manner in which the partition of properties, which have been subjected to transfer, is effected. The judgment of the

Supreme Court in *Khemchand Shankar Vs. Vishnu Hari*, reported at **AIR 1983 SC 124,** in this regard, would obviously be within the knowledge of the learned trial Judge and in any case, enthusiasm of the learned counsel for the petitioner would ensure that the learned trial Judge did not miss the point and therefore, the apprehension about observation in the order passed by the learned trial Judge need not bother the petitioner. The learned trial Judge would necessarily consider that in order to avoid complications the Courts have been consistently allotting the properties sold by the party entitled to partition to the share of such party, unless some grave prejudice is going to be caused to the adversary.

7. In view of this, the petition does not deserve to be entertained in exercise of jurisdiction under Article 226 or 227 of the Constitution, and is, consequently, dismissed.

JUDGE.

RR.